IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

LETTERS PATENT APPEAL NO. 155 OF 2007
IN
WRIT PETITION NO. 5251 OF 2007
with
C.A. No. 281 of 2007

Kolhapur Zilla Sahakari Doodh Utpadak)
Sangh Maryadit, Kolhapur, having its office at)
B-1, M.I.D.C., Gokul, Shirgaon,)
District Kolhapur – 416 234)...Appellant

versus

State of Maharashtra and 64 others ...Respondents

Mr. S.S. Pakale with Mr. Aditya Chitale and Ms. Yogita R.Tanawade for the appellant.

Mr. S.R. Nargolkar, Assistant Government Pleader, for respondent Nos. 1 to 3.

Mr. P.K.Dhakephalkar, Senior Advocate, with Mr. S.S. Patwardhan for respondent Nos. 5 and 38.

CORAM: **SWATANTER KUMAR, C.J.** &
DR. D.Y. CHANDRACHUD, J.

Judgment reserved on : August 17, 2007
Judgment delivered on: August 23, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Respondent Nos. 5 to 65 in the present appeal had filed appeal under Section 152 of the Maharashtra Co-operative Societies

Act, 1960 (hereinafter referred to as “the Act”) before the Joint Registrar, Co-operative Societies (Dairy), Mumbai, against the order dated 30th December, 2006, passed by the Deputy Registrar, Co-operative Societies (Dairy), Pune. The Deputy Registrar in that order had granted approval to the resolution passed in the Annual General Body meeting held on 11th November, 2005, under Section 35 of the Act which expelled 225 societies from its membership. The order dated 30th December, 2006, was challenged on various grounds, including that there was no proper meeting and no proper procedure was followed in accordance with law. The affected parties were not granted proper notices. Notices of the Annual General Meeting dated 11th November, 2005 were sent on 11th October, 2005 and were received by the concerned societies from 12th to 18th October, 2005 and as such the said notice is not of clear 30 days as required under law. Reliance was also placed upon different judgments of the Court. Another contention that was raised before the authorities was that approval had been granted without proper application of mind and in a routine manner. As there was no compliance of Section 35 of the Act read with Rules 28 and 29 of the Maharashtra Co-operative Societies Rules, 1961 (hereinafter referred to as “the Rules”) which are mandatory, the entire order is vitiated. These arguments were

contested by the Appellant that notices were issued to all 263 societies on 6th June, 2005 and from 11th October, 2005 only 38 societies started supplying milk again and remaining 225 societies were absent on 11th October, 2005. Despite service of notice, no written representation was received. No explanation to show cause notices was received and resultantly they were expelled. The Appellate Authority, Joint Registrar, Co-operative Societies (Dairy), Worli, after dealing with all these contentions in great detail, held as under:-

> "I have gone through the records and proceedings of the Respondent No.1. It is true that the Respondent No.1 has given sufficient opportunity to all the concerned Societies including the Appellants and even inspite of purshis on behalf of some of the Appellants Societies, they have not started supply of milk and as such it is clear that the Appellants Societies did not wish to start supply of milk to the Respondent No.2 and as such it is the duty of the Respondent No.1 to see the well being of the Society and if some of the Societies who have expelled started supply of milk, there is no illegality on the part of the Respondent No.1 in not giving approval for their expulsion. Under these circumstances I am not agreeable with the submission on behalf of the Appellants that the Resolution cannot be segregated.
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> 44. It seems that after receipt of the proposal and filing of say on behalf of the Appellants which is dated 26.6.2006, no positive case is made out by the Appellants but some general statements are made by them in the said say. I find that after submissions of all the documents, the Respondent No.1 by deputing officers from the Department have taken inspection of the record of the Respondent No.2 Sangh in its office so as to satisfy himself about the facts and circumstances. I have minutely gone through the impugned order passed by the Respondent No.1. The

said order is detail order and the Respondent No.1 has considered all the aspects i.e. Factual as well as legal and has discussed the same in his order categorically and thereafter only and by giving proper and sufficient opportunity for leading oral evidence by way of affidavits and the interrogatories and to produce the documentary evidence, has passed the impugned order. That according to my findings, the impugned order is perfectly legal and valid and it is according to the facts and law. The Appellants have acted against the interest of the Respondent No.2 Sangh by non supplying of milk either by collecting the milk and selling the same to the other or to stop the collection of milk and as such they have invited expulsion according to their own acts. Hence, I hold that the impugned order needs to be confirmed without interfering the same and hence I confirm the order under challenged passed by the Respondent No.1 on 30th Decembe4r, 2006. I find that the evidence recorded by the Respondent No.1 are perfectly based on facts, documentary evidence and the concerned legal position. Hence, I find that there is no substance in the appeal filed on behalf of the Appellants. Hence, I proceed to pass following order.

ORDER.

1. The appeal is dismissed.
2. In the circumstances, no order as to the cost."

2. The order of the Appellate Authority dated 11th May, 2007 was challenged by the affected parties before the Minister (Dairy Development) by filing a revision application. The revisional authority vide his order dated 11th July, 2007, found that the order of the Appellate Authority was not in conformity with the Division Bench judgment of this Court in the case of *Bhaskar Laxman Rane vs. Shri*

Gurudev Nityanand Co-operative Housing Society Ltd., Worli, Bombay and others, 1998 (3) Mh.L.J. 127, and resultantly set aside the above order and passed the following direction:-

> "1. After giving one opportunity to the Applicant, the membership of 61 Applicant Societies is hereby restored for one year subject to condition of supply of the milk to the Sangh.
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> 2. No order as to costs".

3. Correctness of the order of revisional authority dated 11th July, 2007, was challenged by the appellant by filing Civil Writ Petition No. 5251 of 2007, which was also dismissed by a learned single Judge by a detailed judgment dated 18th July, 2007.

4. The learned single Judge observed that as 30 days clear notice was not given by the appellant to respondent Nos. 5 to 65 in the writ petition, the resolution of expulsion passed in the General Body Meeting was not legal and valid. Thus the authorities could not have granted approval under Section 35 (a) of the Act.

5. Aggrieved from the judgment of the learned single Judge dated 18th July, 2007, the appellant has field the present appeal before

this Court.

6. Section 35 of the Act gives power to a Society to expel its members by following the procedure prescribed therein. Rule 29 of the Rules prescribes the procedure for expulsion of members. This Rule clearly postulates that if any member of a society proposes to bring resolution for expulsion of any other member, he is required to give notice in writing, whereafter the matter would be taken up on the next general meeting, provided a notice thereof is given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause against expulsion to the general body of members. Rule 28 also gives power to the society for expulsion of its members who have persistently defaulted in payment of dues or have been failing to comply with the provisions of bye-laws regarding sale of their produce through the society, etc. Even expulsion under this Rule is to be effected in accordance with the provisions of Section 35 (1) of the Act. The learned counsel appearing for the appellant contended that the plea of notice in terms of Rule 29 was not taken by the affected parties before the authorities concerned and as such the revisional authority and/or

the Court could not have taken up that plea for the purposes of setting aside the order. This is factually incorrect inasmuch as in the grounds stated and written submissions made by the opposite party before the Deputy Registrar on 21st December, 2006, both these points were not only pleaded but even reference was made to the judgment of this Court.

7. A Division Bench of this Court in the case of *Bhaskar Laxman Rane (*supra) has clearly held that notice of meeting contemplated by Rule 29 in the matter of expulsion of member referable to Section 35 of the Act had to be served on the member against whom resolution was proposed to be passed at least one month prior to the date of the meeting. A meeting held earlier to such a period and the business recorded therein would be illegal and bad in law.

8. Reliance was placed upon the judgment of the Supreme Court in the case of *Forbes Forbes Campbell & Co. Ltd.* vs. *Engineering Mazdoor Sabha*, AIR 1978 SC 340, to contend that this is merely an irregularity not substantially affecting the decision taken in the general body meeting and substantial compliance would be sufficient. The provision has to be read not rigidly but flexibly and with an amount of

latitude. We may notice that the judgment of the Supreme Court is of no help to the appellant inasmuch as the Supreme Court in the said case was concerned with the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act,1971, and the Rules which require an application to be made for recognition in accordance with Form A read with Rule 4 of the Rules framed thereunder. The application was rejected on the ground of non-compliance of Form-A and the Court held that subsequent application was not barred in view of the one year limitation specified under the Act. This judgment is of no help to the appellant on any known canons of ratio decidendi as it has no application either on facts or in law.

9. The only apparent mistake that appears to have occurred in the order of the revisional authority is that in its order dated 11th July, 2007, it has restored the membership of 61 Societies for a period of one year, subject to condition of supply of milk to the appellant-sangh. Incorporation of this direction is not sustainable in law. Either the expulsion of the members was good or it was bad in law. If it was good, then the impugned order, in any case, could not have been passed. If the expulsion was bad, then there was no question of fixing a limitation of time.

10. Thus, we do not find any merit in the present appeal. The same is dismissed, however, with the clarification that the time condition incorporated in the order dated 11th July, 2007 is of no consequence. We make it clear that the appellant-sangh is free to hold fresh meeting in accordance with law in regard to the expulsion of the respondents in the appeal.

11. In view of the dismissal of the appeal, no orders are required to be passed in the Civil Application. The Civil Application is also disposed of accordingly.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.